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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	WT Docket No. 97-199
)	
WESTEL SAMOA, INC.)	File No. 00560-CW-L-96
)	
For Broadband Block C Personal)	
Communications Systems Facilities)	
)	
and)	
)	
WESTEL, L.P.)	File Nos. 00129-CW-L-97
)	00862-CW-L-97
For Broadband Block F Personal)	00863-CW-L-97
Communications Systems Facilities)	00864-CW-L-97
)	00865-CW-L-97
)	00866-CW-L-97

To: The Commission

OPPOSITION OF THE WESTEL PARTIES
TO CLEARCOMM'S APPLICATION FOR REVIEW

WESTEL SAMOA, INC.
WESTEL, L.P.
QUENTIN L. BREEN

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February 17, 1998

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Westel Samoa, Inc. ("WSI"), Westel, L.P. ("WLP") and Quentin L. Breen ("Mr. Breen") (WSI, WLP and Mr. Breen collectively the "Westel Parties"), by their attorneys and pursuant to Section 1.301(c) of the Commission's Rules, hereby oppose ClearComm, L.P.'s January 26, 1998 "Application for Review" ("Application") of the January 14, 1998 interlocutory order of the Presiding Judge in the instant proceeding.¹ For their opposition, the Westel Parties state as follows:²

Assuming, arguendo, that the Application was timely filed, the Application still suffers from serious procedural defects. Clearcomm neither claims to be a party to the applications at issue in this proceeding, nor did Clearcomm participate in the predesignation processing or review of the subject applications. Further, as noted in the Order, Clearcomm failed to demonstrate either that it would be aggrieved or adversely affected by the grant or denial of the subject applications, or that its status before the Commission would be adversely impacted by the outcome of this proceeding.³ Accordingly, Clearcomm is not entitled to participate in the instant proceeding as a matter of right.⁴ In the absence of a right to intervene, intervention in the instant

¹ Memorandum Opinion and Order, WT Docket No. 97-199, FCC 98M-3 (released January 16, 1998) ("Order"). ClearComm, L.P. previously was known as PCS 2000, L.P. This opposition adopts the Application's convention of always referring to that entity as "Clearcomm".

² This opposition is timely in light of the joint request for extension of time filed by Clearcomm and the Westel Parties.

³ Order, at paras. 9-12.

⁴ Id.

proceeding may be had by Clearcomm only at the discretion of the presiding officer.

The Presiding Judge, on the basis of the facts and arguments posited in Clearcomm's intervention request, ruled that "Clearcomm has not demonstrated that discretionary intervention....is warranted."⁵ Although the Application seeks to have the Commission reverse that discretionary ruling, the Application presents and relies upon facts and arguments which were not previously presented to the Presiding Judge.⁶ By doing so, the Application seeks to overturn a discretionary ruling without first giving the issuing official an opportunity to consider and rule upon factors now posited by Clearcomm as important. It is respectfully suggested that any Commission tampering with the Order without the Presiding Judge first being afforded an opportunity to consider new allegations first raised in the Application would constitute an unwarranted usurpation of the discretion normally afforded an officer presiding over the conduct of a proceeding.

The Application also alludes to a pending reconsideration petition filed with regard to this proceeding on behalf of

⁵ Id., at para. 13.

⁶ For example, the Application, inter alia, relies on Clearcomm's purported concern over language from a summary decision motion filed by the Westel Parties on January 21, 1998, a date a full week after the issuance of the Order. See, Application, fn. 17 and 19.

Anthony T. Easton;⁷ refers to Mr. Easton's refusal to answer deposition questions posited by the Bureau;⁸ and cites a civil action Clearcomm has instituted against Mr. Easton and Romulus Telecommunication, Inc.² By attempting to associate Mr. Easton with this proceeding, Clearcomm is asking that those considering its intervention request speculate as to whether Clearcomm should be allowed to participate in a proceeding in which Mr. Easton's qualifications are at issue.¹⁰ Party status should not be based on speculation. If, in the future, Mr. Easton is rejoined as a party to the instant proceeding, then, and only then, may Clearcomm be entitled to have its intervention request considered by the Presiding Judge in such light. Until such eventuality comes to pass, however, the Commission should reject speculation as to Mr. Easton's future status as untimely, and should not

⁷ Application, at fn. 15. Subsequent to the filing of that petition for reconsideration, but well before Clearcomm first sought to intervene in this proceeding, Mr. Easton's status as a party to the instant proceeding was terminated. Order, FCC 97M-172 (released October 20, 1997).

⁸ Id., at fn. 8. It also should be noted that Mr. Easton's deposition in connection with the instant proceeding took place after the filing of Clearcomm's initial intervention request.

² Id., at fn. 14. It should be noted that none of the Westel Parties is a named party to the cited civil action.

¹⁰ The Commission also should reject Clearcomm's blatant mischaracterization of the Commission's actions in the PCS 2000 NAL (cited in Application, at fn. 5) That NAL was not based on any "alleged misconduct" by Mr. Breen. In fact, the Commission declined to reach any "determination" or "conclusion" with regard to Mr. Breen, but, instead, reserved such determinations and conclusions for a future proceeding, such as this one.

consider such speculation as justification for allowing intervention by Clearcomm in this proceeding.¹¹

The Westel Parties are unable to perceive how the instant proceeding could have negative implications for Clearcomm. The Commission, in granting Clearcomm's licenses, specifically ruled that Mr. Breen's qualifications to be a Commission licensee had no bearing on Clearcomm's independent qualifications. Does Clearcomm now believe it appropriate for the Commission to revisit its rulings in that regard? If so, Clearcomm must be much more forthcoming with both the Commission and the Westel Parties, and divulge all facts it considers potentially detrimental to Clearcomm's status as a Commission licensee. If there are none, then there is no potential for harm to befall Clearcomm in the instant proceeding, especially in the absence from the proceeding of Mr. Easton.¹²

¹¹ The Commission need not address issues regarding Mr. Easton in a present proceeding, including this one, because Mr. Easton does not seek presently to become a Commission licensee. In the unlikely event the Commission somehow deems it appropriate to rejoin Mr. Easton as a party to this proceeding, however, Clearcomm could then seek to intervene on the basis of that rejoinder, and the Westel Parties could well be moved to support such intervention. To now allow intervention by Clearcomm on the basis of a speculative rejoinder of Mr. Easton would be improper.

¹² It should be noted that, although Clearcomm, as a party, is precluded by the Commission's findings and conclusions in the PCS 2000 orders, the Westel Parties, who were not parties to those proceedings, are not subject to any such preclusion. Only if Clearcomm becomes a party to the instant proceeding will any findings or conclusions herein be preclusionary with regard to Clearcomm, and only then could they be viewed as disruptive of the PCS 2000 findings and conclusions regarding Clearcomm.

In the Application, and for the first time in any Commission proceeding of record, Clearcomm claims an interest in this proceeding because, if Mr. Breen is found in this proceeding to possess the qualifications to be a Commission licensee, he will become entitled to exercise his warrant to acquire an equity and voting interest in Clearcomm's corporate general partner. The cited warrant has long been acknowledged by Clearcomm and Mr. Breen to be in the public interest and in their respective best interests. Therefore, Clearcomm now cannot be claiming that the return of a qualified principal would be adverse to any interests within the Commission's jurisdiction. Accordingly, the fact of the warrant does not provide a basis for finding an interest upon which to grant Clearcomm intervention in this proceeding.

It is respectfully submitted that, in light of the foregoing, the Commission should deny the Application and thereby ratify and affirm the Presiding Judge's Order denying Clearcomm's request for intervention in the instant proceeding.

Respectfully submitted,

WESTEL SAMOA, INC.
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